(1)

C-2211

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

S.A. NO. 306 **/2005**

APPELLANTS PLAINTIFFS : 1] Punamchand Sharma S/o. Shivnandan Aged about 35 years, Occupation- Pan Shop

2] Smt. Bimlabai W/o Punamchand, Aged about 30 years,
Both R/o, Near Old Bus Stand, Kandrapara, Bemetara, Tah. - Bemetara, Distt. - Durg (C.G.)

P.R. No. 1463/05
Presented by Shri [illegible] Bhatnagar
dated 30/05/05

VERSUS

RESPONDENTS DEFENDANTS : 1] Nandlal Tiwari S/o. Sheonandan , aged about 45 years, Occupation Agriculturist, R/o. Village – Jiya, Tah. - Bemetara, Distt.- Durg (C.G.)

Present R/o. – Brahmanpara, near Ajad Chowk , Raipur (C.G.)

2] State of Chhattisgarh,
Through: Collector Durg, District Durg (C.G.)

RECEIPT-COPY
30.5.05
CLERK to A. G. BILASPUR

SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE

36

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Second Appeal No 306/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	21.10.2005 Shri Manoj Paranjpe, counsel for the appellants. Shri PKC Tiwari, Senior Advocate with Shri Raja Sharma, counsel for respondent No.1 . Shri JD Bajpai, Government Advocate for the State / respondent No.2. Heard learned counsel for the appellants on admission and both the parties on M.(C.)P.No.906/2005. RespondentNo.1 / Plaintiff Nandlal Tiwari filed a suit against appellants for possession of suit land bearing Khasra No.1217/4 admeasuring 0.17 acres and mesne profit claiming himself to be the title-holder of the suit land and being dispossessed by the appellants. Appellants denied all the contentions of the plaint and pleaded that they are in possession of those lands which they have purchased and have not dispossessed respondent No.1. A Commission for local investigation had been appointed by the trial Court and on the direction of Commissioner Shri MS Shandalya, demarcation of suit land and adjoining lands have been done by M.C Dhruv, Revenue Inspector. The trial Court vide judgment and decree	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	dated 11.08.2003 allowed the suit in favour of respondent No.1 and passed a decree of possession. The appellants, being aggrieved by the decree, filed an appeal bearing No.35-A / 98. The Additional District Judge Bemetara vide judgment dated 03.10.2002, set aside decree of the trial Court and remanded the case back with a direction to dispose of the suit on merit after summoning MC Dhruv, Revenue Inspector and after his examination.MC Dhruv died in an accident and could not be examined by the trial Court. Without his examination, the trial Court again vide judgment and decree dated 11.08.2003 decided the suit in favour of respondent No.1. Thereafter appellants challenged the judgment and decree in appeal and in appeal No.32-A / 2003, Additional District Judge Bemetara vide judgment and decree dated 12.04.2005, affirmed the decree of trial Court. Being aggrieved with that judgment and decree, this Second Appeal under Section 100 of the C.P.C., has been filed. After going through the records and taking into consideration the argument advanced by the counsel for the appellants, I am of the opinion that this appeal involves substantial question of law.	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	boundaries of the suit land are destroyed and not in existence, I am of the opinion that to resolve the dispute a fresh local investigation is essential as the earlier one having objection cannot be acted upon without the evidence of M.C. Dhruv who is now dead. Accordingly the substantial question of law is answered. In the result, the appeal is allowed, the impugned judgment and decree as well as judgment and decree of the trial Court are set aside and the case is remanded back to trial Court with a direction that a fresh Commission for local investigation to determine the location of the suit land be issued and after lawful admission of the same the suit shall be disposed of afresh on its own merit. Appellants to bear the Commission's expenses. Parties to appear before the trial Court on 17th November 2005 positively. No fresh notice shall be issued to the parties. They shall cooperate with the Court. The Court shall decide the case as early as possible. Parties to bear their own costs. Sd/- V.K.Shrivastava Judge	
	Padma	